

M. A. McHENRY
C. D. McHENRY
A. H. HAILE
BETTY J. McHENRY

IBLA 71-157

Decided August 15, 1972

Appeals from decisions by the Phoenix land office, Bureau of Land Management, Ariz. 6005-7, declaring portions of mining claims null and void ab initio.

Affirmed.

Mining Claims: Determination of Validity

Mining claims located on lands after they have been included in an application for withdrawal, which was noted on the records of the land office, are properly declared null and void ab initio.

APPEARANCES: M. A. McHenry, C. D. McHenry, A. H. Haile, each pro se.

OPINION BY MR. FRISHBERG

The Bureau of Reclamation filed an application for withdrawal of certain described lands from all forms of appropriation for the Central Arizona Project. The official records of the Bureau of Land Management (BLM) were duly noted to that effect on February 20, 1962; the application is still pending. The appellants located the mining claims involved in this appeal from a month to eight years later. The BLM decisions declared them null and void, insofar as they covered the lands included in the withdrawal application, for having been located on lands not then open to mining location. The appellants have appealed asserting that the lands are mineral and "have not been posted" by the Government.

The departmental regulation 43 CFR 2091.2-5 (formerly 2311.1-2) provides that:

The noting of the receipt of the application * * * in the tract books or on the official plats maintained

in the appropriate Land Office shall temporarily segregate such lands from settlement, location, sale, selection, entry, lease, and other forms of disposal under the public land laws, including the mining and the mineral leasing laws, to the extent that the withdrawal or reservation applied for, if effected, would prevent such forms of disposal * * *

If the withdrawal is effected the lands withdrawn will not be open to mineral location. A. L. Snyder, 75 I.D. 33 (1968).

The regulation giving segregative effect to an application for withdrawal upon its notation on the records of the Department was fully discussed and sustained in Mrs. Ethel H. Myers, 65 I.D. 207 (1958), and in Marion Q. Kaiser et al., 65 I.D. 485 (1958). It was pointed out in Kaiser that the regulation was reasonable and essential to the effectuation of withdrawals of land. The validity of the procedure is not open to challenge. Nor does it matter that the land may be mineral in character. Furthermore, there is no burden upon the United States to post on the ground; the records of the land office are official notice of the status of the public domain lands.

It follows that the decision below was correct in holding the mining claims, to the extent they cover lands covered by the application of withdrawal, to be void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 211 DM 13.5, the decision appealed from is affirmed.

Newton Frishberg
Chairman

We concur:

Martin Ritvo
Member

Anne Poindexter Lewis
Member

